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In the Supreme Court of the United States

OCTOBER TERM, 1968

No. 814

RAYMOND JOSEPH DUVERNAY, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES

OPINION BELOW

The opinion of the court of appeals (A. 70–76) is reported at 394 F. 2d 979.

JURISDICTION

The judgment of the court of appeals was entered on February 7, 1968 (A. 77), and petitions for rehearing and for rehearing *en banc* (A. 77–78) were denied on May 14, 1968 (A. 78). On June 13, 1968, Mr. Justice Black extended petitioner's time for filing a petition for a writ of certiorari to and including June 23, 1968 (a Sunday). The petition was filed on June 24, 1968, and was granted on December 9, 1968 (A. 89).

The jurisdiction of this Court rests upon 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether Selective Service Regulation 1625.2, which prohibits a local board from reopening a registrant's draft classification after the issuance of an order to report for induction unless there has been a change in the registrant's status resulting from circumstances beyond his control, is valid and was validly applied in this case.

2. Whether Regulation 1625.2 may be invoked at a registrant's criminal trial for refusal to submit to induction, so as to preclude him from contesting the validity of his I–A classification, when it does not appear whether the registrant had been personally advised of the substance of the regulation.

3. Whether petitioner was foreclosed under the exhaustion-of-administrative-remedies doctrine from contending that the indictment was subject to dismissal on the ground that Negroes allegedly had been systematically excluded from his local board, and whether in any event, the motion to dismiss was properly denied.

REGULATIONS INVOLVED

The pertinent provisions of Selective Service Regulations 1625.1 and 1625.2 (32 C.F.R. 1625.1 and 1625.2) are set forth in the Appendix, *infra,* pp. 39–40.

STATEMENT

Following a jury trial in the United States District Court for the Eastern District of Louisiana, petitioner was convicted of refusing to comply with an order of

his local Selective Service board directing him to submit to induction into the armed forces, in violation of Section 12 of the Universal Military Training and Service Act (now the Military Selective Service Act of 1967) (A. 1, 67). On September 7, 1966, he was sentenced to five years' imprisonment (A. 68). The court of appeals affirmed (A. 70–77).

1. In January 1964, petitioner, then 18 years old, registered for selective service with Local Board No. 42 in New Orleans, Louisiana (A. 28, 70). The following month he was placed in Class I–S(H), a deferred classification, on the basis of his status at that time as a high school student (A. 28, 35). Petitioner thereafter filed with his board a "Current Information Questionnaire" in which he inadvertently failed to report that he was still a high school student; as a consequence, on July 29, 1964, he was erroneously reclassified I–A (available for military service) (A. 35; G. Ex. 4, SSS Form 100, p. 8).[1] Four days later, on August 2, 1964, petitioner advised the board by letter that he was still in high school, stating that he could produce written proof of the fact, and requested a personal appearance before the board to discuss the matter (A. 79). On August 4, the clerk of the board called petitioner's attention to his failure to state in his questionnaire that he was still in high school and returned the questionnaire to him with the request that he supply the necessary information (A. 79).

[1] Government Exhibit 4, petitioner's Selective Service file, was admitted in evidence at A. 57 and is on file in the Clerk's office. SSS Form 100, the classification questionnaire, is the first document in the folder.

Petitioner complied and, on August 24, 1964, he was again placed in Class I–S(H) (G. Ex. 4, SSS Form 100, p. 8).

Petitioner's I–S(H) classification expired on June 1, 1965 (G. Ex. 4, SSS Form 100, p. 8). On July 27, 1965, before any change in his classification had been effected, petitioner advised his board by letter that he had completed high school the previous month, noted that his Selective Service "card" had expired on June 1, and reported that he was currently taking pre-college courses at a university in New Orleans. The letter stated that he planned to attend Louisiana State University in the fall, and he said he desired to get another student deferment in order to continue his education (G. Ex. 4, ltr. of 7/27/65). Petitioner did matriculate at Louisiana State University the following September and on November 17, 1965, he was placed in Class II–S, the regular deferred classification for university students (A. 28, 36; G. Ex. 4, SSS Form 100, p. 8).

In December 1965, petitioner abandoned his university studies and during the following month, January 1966, started working as a laborer at a housing project (A. 29, 82–83). On January 19, 1966, he was reclassified I–A (A. 36, 44, 53). On January 28, 1966, he was ordered to report on February 23 for his pre-induction physical examination (G. Ex. 4, SSS Form 223, 1/28/66). Petitioner failed to report as directed—he claimed that he overslept—and he was directed to report for a rescheduled examination on

March 14.[2] He then reported and was found acceptable for induction (G. Ex. 4, DD Form 62) and on April 13, 1966, he was ordered to report for induction on May 20 (A. 14–15).

In the meantime, about mid-March of 1966, petitioner quit his job as a laborer and became employed by the Social Welfare Planning Council, an anti-poverty agency in New Orleans (A. 29, 37–38, 39, 82–83, 86–87).[3] Accordingly to undisputed testimony by his mother at the trial and a statement made by her to the clerk of the local board on April 25, 1966 (see *infra*), petitioner, prior to his change of employment, had been contributing from his wages as a laborer toward the support of his mother and his six younger brothers and sisters, ranging in age from 9 to 17, and his contributions continued and increased in amount following his change of employment (A. 39, 82–83).[4] However, petitioner took no steps at any time prior to his receipt of the order to report for induction to se-

[2] A. 34; G. Ex. 4, SSS Form 223, 3/3/66; G. Ex. 4, SSS Form 100, p. 8; G. Ex. 4, letter misdated 2/23/65 (should be 2/23/66).

[3] The record does not reflect the exact date of the change of employment. Petitioner testified that he had been working on his new job "a couple of months" when efforts were made by his new employer to secure an occupational deferment for him (see *infra*) (A. 33, 37–38). The record indicates that these efforts were being made in the early days of May 1966 (A. 33, 37–38, 86–87).

[4] The respective contributions amounted to $50 and $70 per biweekly pay period. The contributions from his pay as a laborer apparently extended throughout his employment in that capacity, which began in January 1966, approximately three months prior to the issuance of the order to report for induction (A. 39, 83).

cure either a hardship or an occupational deferment, or otherwise to effect a change in his draft classification (A. 16, 38, 81–83).

Beginning on April 15, 1966, after receiving the order directing him to report for induction, petitioner initiated a series of efforts, in conjunction with his mother and employer, to obtain a further deferment from military service on a variety of grounds. On that date he appeared at the office of his local board and advised the clerk, Mrs. Cecile Calmes, that he was planning to return to the University in the fall and desired a renewal of his student deferment (A. 15, 81–82). The clerk advised that it was necessary to be currently enrolled in a school in order to obtain a student deferment; however, she recorded the information supplied on a Selective Service form known as a Report of Oral Information and made it available to the board (A. 17–18, 81–82). Ten days later, on April 25, petitioner's mother, Mrs. Raymond DuVernay, appeared at the board's office for the first time and, in a conversation with the clerk, either requested a hardship deferment for her son or supplied information which, if seasonably presented, might possibly have warranted the granting of such a deferment; she told the clerk that from his wages petitioner had been contributing to her support and that of his six minor brothers and sisters and she supplied the financial details of such support (see note 4, *supra,* p. 5) (A. 16, 17, 39, 82–83).[5] The clerk recorded the infor-

[5] 32 C.F.R. 1622.30(b) provides for the placement in Class III–A of any registrant whose induction into the armed forces would cause extreme hardship to a parent, brother, or sister

mation in another Report of Oral Information and made it available to the board (A. 17–18, 82–83).

At a meeting of the board on April 27, 1966, the information submitted by petitioner and his mother was reviewed and, by a 4–0 vote, the decision was made not to reopen petitioner's classification (A. 54, 80, 85).[6] By letter dated April 28, 1966, petitioner was advised that the information which had been submitted had been considered by the board and that it was the opinion of the board that he should report for induction on May 20, as ordered (A. 85).

Petitioner thereafter sought an occupational (Class II–A) deferment on the basis of his work with the Social Welfare Planning Council (A. 33, 86–87). On May 12, 1966, the associate executive director of the Council submitted a letter to the board describing the

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who is dependent upon him for support. There was a conflict in the testimony as to whether Mrs. DuVernay requested a hardship deferment for her son at the April 25 interview or whether she merely supplied information in support of a request for deferment made previously by petitioner himself. Mrs. DuVernay testified that she requested a hardship deferment at the interview (A. 39). The clerk testified that Mrs. DuVernay supplied pertinent information on this occasion but that the request itself had been made by her son (A. 16, 17).

[6] As petitioner notes at Pet. Br. 33, the minutes of this meeting (DuVernay Ex. 8, A. 83–85), which were kept by the clerk of the board (A. 19), do not reflect the board's action regarding petitioner (A. 85). However, two board members testified that not everything that was discussed at the board meetings was necessarily reflected in the minutes (A. 47, 54) and Board Member Bozonier, who participated in the consideration of petitioner's case at the April 27 meeting, testified that there was a document in petitioner's individual file which showed that the matter was considered (A. 54). The document referred to—a "continuation sheet" of the "minutes of actions" with respect to petitioner—appears at A.80.

work petitioner was engaged in and requesting a deferment on his behalf (A. 86–87). By letter dated May 16, 1966, the Council was advised that its request had been given consideration by the board, but that the request had not been granted and petitioner was to report for induction as ordered (A. 87).

Petitioner reported to the induction center on the date scheduled in the induction notice, informed the officers in charge that he refused to be inducted, and, after the criminal consequences of such refusal had been explained to him, declined to take the single step forward which symbolizes entry into the armed forces (A. 20–26). Following his refusal, petitioner made the following handwritten statement explaining the reasons for his action:[7]

> I feel that because of the intimidation and suppression of and discrimination against minority groups here in the United States, especially we the negro, and because these groups are not fully guaranteed and fully assured their rights as citizens of the United States and because our rights as citizens of the United States are not fully protected by the United States Government, and because of the need for much Civil Rights work and the need for anti-poverty programs, that I should not be inducted into the armed forces to maybe be ordered to fight in a war that I believe our involvement in is unjust, and that we have no business fighting, but instead that I be allowed

[7] G. Ex. 4, attachment to letter dated May 20, 1966, from Lieutenant Keith P. Harrington to the United States Attorney for the Eastern District of Louisiana, entitled "Subject: Notification of Refusal to Submit to Induction."

> to continue in the battle within our borders for the advancement of the underprivileged and to help make equality for all citizens of the United States a reality.

2. Petitioner, who is a Negro, moved prior to trial to dismiss the indictment, alleging, in part, that he had been selected and ordered to report for induction by a board from which members of the Negro race had been systematically excluded (A. 2–3). In its answer to the motion the government denied that Negroes had been systematically excluded from the board (A. 4). At a pre-trial hearing Colonel Douglas Pritchett, a member of the staff of the State Selective Service Headquarters, testified that five members were currently serving on petitioner's board; that since 1948 six other persons had served; that members were appointed by the President from persons recommended by the Governor; and that he, the witness, did not know the race of any of the eleven past and present members of the board (A. 5–6). Pritchett further testified that the race of a registrant is not reflected in his Selective Service file at the time he registers or at any time prior to his physical examination (A. 6–7).

In response to an inquiry by the court, government counsel stated that he had been told that no current member of the board was a Negro and that no Negro had sat on the board during the preceding five years (A. 8). Counsel for petitioner requested and was granted leave to establish through affidavits, if he could, that no Negro had ever sat on the board (A. 8–9), but so far as appears no such affidavit was ever

submitted. At the conclusion of the hearing, the court denied the motion to dismiss without opinion (A. 9).

3. At the trial, the government introduced evidence that petitioner had appeared at the induction station as ordered but refused to submit to induction. Petitioner's "defense", while nowhere clearly articulated in the transcribed record, was apparently that the local board had acted arbitrarily and capriciously in refusing his, his mother's and his employer's requests for his deferment (see, *e.g.*, A. 17, 35, 36, 57).[8] So far as appears, however, this "defense" was not made the subject of a motion for judgment of acquittal; in fact, the record as transcribed contains no indication that a motion for judgment of acquittal was made, either at the close of the government's case in chief or at the conclusion of the entire case (see A. 26–27, 58). However, petitioner did request that the jury be given the following instruction (A. 63):

> A registrant is entitled to full and fair disposition of his contentions at every level of the Selective Service System, and arbitrary and capricious denial of due process makes void an order based thereon * * *.

That instruction was refused.[9]

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[8] Defense counsel's opening and closing arguments to the jury, in which this theory of defense may have been more articulately presented, were evidently not transcribed (see A. 13, 58).

[9] Although the defense apparently did not question the propriety or validity of petitioner's I–A reclassification *as of the time of its issuance* (*i.e.*, as of January 19, 1966), the trial court did instruct the jury—without further elaboration or ex-

4. Following the verdict, petitioner moved for a new trial on the grounds (1) that Negroes had been systematically excluded from his local board and (2) that the board had acted arbitrarily and capriciously, and denied him due process, in denying him the hardship deferment he had applied for (A. 67–68). The motion was denied.

On appeal, petitioner renewed his contentions that the indictment should have been dismissed because Negroes had been systematically excluded from his local board and that the board's method of handling his case had reflected a denial of due process. The court of appeals found it unnecessary to reach the merits of either contention. It affirmed the conviction on the ground that both contentions were foreclosed by petitioner's failure to exhaust his administrative remedies (A. 71).[10]

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plication and, so far as appears, without solicitation by either party—as follows (A. 61):

> The defendant has raised the defense through his counsel that his classification by this particular Draft Board was arbitrary and without any basis in fact. That is something that you as jurors are going to have to determine after considering all the evidence that has been presented in this trial.

[10] A third contention, relating to the trial court's assertedly improper limitation of defense counsel in the interrogation of a witness, a board member, concerning *alleged* Ku Klux Klan affiliations of the person, no longer a board member at the time, who had chaired the board at the time petitioner was placed in Class I–A on January 19, 1966 (A. 43, 71), was also held to be foreclosed.

SUMMARY OF ARGUMENT

I

Petitioner's failure to contest his I–A classification administratively until after he had been ordered to report for induction foreclosed him from challenging it at his trial.

A. Selective Service Regulation 1625.2 precludes a local board from reopening and reconsidering a registrant's classification upon the presentation of facts not previously considered after the issuance of an order to report for induction, unless there has been a change in the registrant's status resulting from circumstances beyond his control. This regulation is valid and necessary because if a registrant could wait, as petitioner did, until after he had been ordered to report for induction before seeking to change his I–A classification, the responsibility of local boards for meeting their draft call quotas would be seriously hampered and the Selective Service process itself placed in jeopardy. The plain purpose of the proviso is to preclude just such eleventh-hour efforts to seek reclassification as petitioner attempted in this case. Since the local board was precluded from considering the claims of occupational or hardship deferment because of petitioner's failure to seasonably present them, it would be particularly inappropriate for the courts to pass on the validity of these deferment claims, which are committed by statute to the discretion of the local boards.

B. The local board did not in fact continue to weigh and evaluate petitioner's draft status during the period after the mailing of the induction notice. There is thus no basis for petitioner's contention that the board *in effect* reopened his classification and thereby revived his right of administrative appeal. Moreover, since under Regulation 1625.2 the board was prohibited from reopening the classification after the issuance of the induction notice, there would be no basis for a claim of prejudice even if the board had in fact continued to evaluate his status on the basis of the information which he submitted. The record does show that the board gave careful attention to all of the information submitted on petitioner's behalf. But this suggests no more than that the board was scrutinizing the information, as it had the duty to do, to determine whether there had been a change of status resulting from circumstances beyond petitioner's control.

II

It was not error for the court of appeals to apply the exhaustion doctrine in this case merely because petitioner had not been specifically advised that his failure to exhaust administrative remedies would preclude him from challenging his classification in any future trial for refusal to submit to induction. The considerations governing the waiver of constitutional rights in criminal cases are not applicable in determining whether a registrant may be required to make

a timely presentation to the board of facts that may affect his classification. A deferment is not a matter of right but a matter of legislative grace. Indeed, the occupational deferment is established not to protect any interest of the registrant but rather to promote "the national interest." It was, therefore, reasonable for the President, in adopting the regulations, to conclude that it is more vital to the national interest that questions of classification be finally determined prior to the mailing of a notice of induction than that untimely claims to deferment be allowed.

Every registrant is warned, by notices appearing both on his registration and classification certificates, that he is required to notify his local board in writing of every change in address, physical condition, and occupational, marital, family, dependency, and military status, and of any other fact which might change his classification. The classification certificate further tells him that he must report each such change within ten days of its occurrence and explains his personal appearance and appeal rights. These warnings and this advice put registrants on adequate notice of the importance of the classification in the administration of the Selective Service System and of the need to observe the indicated time limits in contesting or appealing a classification.

III

A. Petitioner's failure to exhaust his administrative remedies with respect to the propriety of his I–A classification precluded his challenge to the indictment based on the alleged systematic exclusion of Negroes from his local board. For if he had seasonably pursued and fully exhausted those remedies he might have secured a change of classification and thereby obviated an induction order, and, thus, have rendered the discrimination issue moot.

B. Apart from exhaustion considerations, the challenge to the indictment is unsound on its merits.

In the first place, the record contains no evidence that Negroes were systematically discriminated against in the appointment of members to the board. The sole "factual basis" for the claim of discrimination was, and is, the stipulated fact that no Negro had served on the board for five years. During that period only nine persons served on the board. This number is too small, and the time interval involved too brief, for the absence of Negroes to have had statistical significance.

Moreover, the analogy which petitioner seeks to draw between juries and public administrative bodies like draft boards is inapt. The much smaller number of persons involved in service on draft boards as compared with the number involved in jury service, and the fact that Presidential discretion, rather than random methods of choice, is employed in the selection procedure, renders reliance on statistics as a basis for showing racial prejudice unwarranted. To show systematic exclusion of a racial group in the

exercise of the executive appointment power would require compelling the executive to testify as to his reasons for choosing certain individuals to serve and not others—an inquiry inappropriate under the doctrine of the separation of powers. The possible biases of the executive authorities in the naming of personnel to draft boards are no more subject to judicial scrutiny in the enforcement of board orders than would be like biases in the filling of vacancies in the Cabinet, on regulatory commissions, or on courts.

ARGUMENT

I

PETITIONER'S FAILURE TO CHALLENGE HIS I–A CLASSIFICATION ADMINISTRATIVELY UNTIL AFTER HE HAD BEEN ORDERED TO REPORT FOR INDUCTION FORECLOSED HIM FROM CHALLENGING HIS CLASSIFICATION AT HIS TRIAL

Petitioner's basic contention is that he was denied due process of law because he was precluded from asserting as a defense to the criminal prosecution that he had been improperly classified by his local board.[11]

[11] Although the district court did charge the jury that it was to determine whether petitioner's classification "was arbitrary and without any basis in fact", we believe that this instruction does not preclude petitioner from contending that he was prevented from challenging his classification at trial. The question of whether the classification was arbitrary was for the court and not the jury (*Cox* v. *United States*, 332 U.S. 442, 452–453) and there is here no indication that the court made an independent determination of the merits of petitioner's classification. Moreover, the instruction given the jury did not provide any standards by which it could determine whether the classification was arbitrary or unreasonable. Finally, the court of appeals based its decision solely on the ground that petitioner was precluded from challenging his classification because he failed to exhaust his administrative remedies.

Petitioner conceded at trial, however, that he had failed to advise the local board of the grounds for his claim of entitlement to an occupational or dependency deferment prior to the time he received his order to report for induction (A. 38). The regulations expressly provide that, in the absence of a change in circumstances beyond the registrant's control, the local board cannot reopen or reconsider a registrant's classification after he has been mailed a notice to report for induction (32 C.F.R. 1625.2, Appendix, *infra*, pp. 39–40). Thus, the court below properly determined that petitioner, by failing to make a timely report of a change in his circumstances, had failed to exhaust his administrative remedies and was, therefore, precluded from raising a challenge to the validity of his classification as a defense to the criminal prosecution.

In our brief in *McKart* v. *United States*, No. 403, this Term, we have set forth in detail the general considerations supporting the rule that a registrant who fails to exhaust his administrative remedies within the Selective Service System is not entitled to challenge the validity of his classification in defense of a criminal prosecution. (See Brief for the United States, *McKart* v. *United States*, No. 403, this Term, pp. 7–24.) We shall not repeat those arguments here but rely on our brief in *McKart*.[12] Here we will address ourselves to the validity of the regulation limiting the power of the local board to reopen or reconsider a registrant's classification after he has been mailed a notice to report for induction. We submit

[12] We are serving counsel herein with a copy of our brief in *McKart*.

that this regulation, which is vital to the orderly and effective administration of the Selective Service System, is constitutional and that the local board did not deny petitioner due process of law in refusing to reopen his classification to determine whether or not he was entitled to a dependency or occupational deferment. Finally, we submit that, if the local board acted properly in refusing to consider the merits of petitioner's claim of entitlement to a dependency or occupational deferment, then the court below was correct in holding that the courts should not review the correctness of petitioner's classification, since questions of deferment are entrusted to the discretion of the local boards.

A. THE REGULATION PROHIBITING THE LOCAL BOARD FROM REOPENING A REGISTRANT'S CLASSIFICATION AFTER HE HAS BEEN ORDERED TO REPORT FOR INDUCTION SERVES A VALID AND IMPORTANT PURPOSE IN THE SELECTIVE SERVICE SYSTEM AND PRECLUDES JUDICIAL REVIEW OF A CLAIM TO DEFERMENT WHICH IS BASED ON FACTS NOT SEASONABLY BROUGHT TO THE BOARD'S ATTENTION.

A Selective Service registrant has at his disposal a clearly defined procedure for seeking administrative correction of a classification believed to be erroneous when made.[13] Similarly, those like petitioner who claim that their classification has become inappropriate because of a subsequent change in circum-

[13] Thus, 32 C.F.R. 1624.1(a) provides the registrant with a right to a personal appearance before the board to discuss his classification if he files a written request for such appearance within thirty days of the mailing of the notice of classification (at the time petitioner was classified I–A the notice had to be filed within 10 days, 13 F.R. 4858–4859). The registrant is also entitled to appeal the decision of the local board either immediately or after he has had a personal appearance before the board. See 32 C.F.R. 1624.2(e) and 32 C.F.R. 1626.2.

stances have open to them administrative machinery to correct that classification.

Regulation 1625.1 (Appendix, *infra,* p. 39) states that "No classification is permanent" and provides that the registrant shall, within ten days after it occurs, report to the local board in writing any fact that might result in his being placed in a different category "such as, but not limited to, any change in his occupational, marital, military or dependency status, or in his physical condition." If notice to report for induction has not been mailed to the registrant and the new facts would, if true, justify a change in the registrant's classification, the board may reopen and reconsider the classification.. 32 C.F.R. 1625.2.[14]

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[14] If a registrant, *prior to his receipt of an order to report for induction*, requests that his classification be reopened on the basis of new information not previously considered, and the board decides not to change the classification, the question whether the registrant has the right to appeal from the board's decision depends on whether the board (1) declines to reopen the classification or (2) reopens and, after reevaluation, reclassifies the registrant in the same class he was in previously. Under 32 C.F.R. 1625.4, if the board is of the opinion that the information accompanying the request fails to present any facts in addition to those previously considered, or, even if new facts are presented, if the board is of the opinion that such facts, if true, would not justify a change of classification, it shall not reopen the registrant's classification, but shall merely advise the person filing the request that the information submitted does not warrant reopening and place a copy of the letter in the registrant's file. There is no right of appeal in such circumstances: If, however, the board reopens the classification on the basis of the new information, 32 C.F.R. 1625.11 provides that the board shall, after considering the information, again classify the registrant in the same manner as if he had

While the regulations provide the registrant with ample opportunity to contest the propriety of his classification, they do require prompt and seasonable action by the registrant. A registrant may not wait until he has been served with a notice to report for induction before he starts to seek a change of classification based on new information or a change in his circumstances. Under Regulation 1625.2, it is then too late. After the notice to report for induction has been mailed, the board is prohibited from reopening a registrant's classification unless it first specifically finds that there has been a change in his status resulting from circumstances beyond the registrant's control. In petitioner's case there was not only no such finding; there was no basis for making one. The board's refusal to reopen petitioner's classification during the period in which he and his mother and employer were seeking to induce it to do so was not due to arbitrariness or capriciousness, as petitioner argues (Pet. Br. 29–32).[15] Under Regulation 1625.2 the board was powerless to do otherwise.

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never been classified, and that such classification shall have the effect of a new and original classification even though the registrant is again placed in the classification he was in previously. In such event, a new right of appeal arises (32 C.F.R. 1625.13).

[15] Petitioner's assertions that the clerk of the board withheld from the board the reports of the oral information which petitioner and his mother had given her in their visits to the board's office commencing on April 15, 1966 (Pet. Br. 33), that *she* denied petitioner's request for a hardship deferment (Pet. Br. 33), and that the board delegated to her its responsibilities and, in general, exhibited laziness and indifference with respect to the powers and responsibilities it was supposed to be exercising over registrants' lives (Pet. Br. 34, 38) have no support in

The validity of that part of Regulation 1625.2 that precludes the local board from reopening or reconsidering the registrant's classification after a notice to report for induction has been mailed to the registrant has been repeatedly sustained as essential to the effective operation of the Selective Service System. *United States* v. *Gearey,* 368 F. 2d 144, 149 (C.A. 2); *United States* v. *Taylor,* 321 F. 2d 228, 230 (C.A. 6); *United States* v. *Beaver,* 309 F. 2d 273, 276–277 (C.A.

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the record. The suggestion that the clerk may have refrained from making available to the board her own reports of the oral information given her by petitioner and his mother appears to have no other basis than the fact that the minutes of the board meeting of April 27, 1966 (DuVernay Ex. 8, A. 83–85) do not refer to petitioner, whereas the clerk's letter of the 28th, purporting to have been written "by direction of the board," informed petitioner that the information which he and his mother had supplied had been considered by the board at its meeting of the previous evening (A. 85). As noted in the Statement, however, two board members testified that not everything that was discussed at board meetings was necessarily reflected in the general minutes of the meetings, and Board Member Bozonier, who participated in the consideration of petitioner's case at the April 27 meeting, testified to the existence in petitioner's individual file of a document which would attest to the fact that his case was discussed at that meeting (*supra*, p. 7, n 6). (The document which the member apparently referred to appears at A. 80.) Petitioner's allegation that the board delegated its responsibilities to the clerk is evidently based on the testimony of Board Members Lizana and Bozonier that it was customary for the clerk to "categorize" registrants prior to the board's voting on their classifications (A. 45, 53; see Pet. Br. 35, 37). The evidence showed, however, that the members would subsequently study the classification data and vote separately and individually on each case (A. 45, 46, 53). There is nothing in any of the excerpts from the testimony of members of the board to which petitioner refers (Pet. Br. 34–37) that gives support to any suggestion of impropriety or irregularity in the board's methods of operating.

4), certiorari denied, 371 U.S. 951; *Boyd* v. *United States,* 269 F. 2d 607, 609–610 (C.A. 9); *Keene* v. *United States,* 266 F. 2d 378, 381–384 (C.A. 10); *United States* v. *Schoebel,* 201 F. 2d 31, 32–33 (C.A. 7). The reason for the provision is clear. The issuance of a I–A classification is in the ordinary course of events followed by a direction to the registrant to report for induction—provided he passes the preinduction physical examination which he is directed to submit to in the interim. It is evident that, if every registrant who has duly received notice that he has been placed in Class I–A could legally wait until after he had received his induction notice before even beginning to challenge his classification, the responsibility of local boards for meeting their draft call quotas would be seriously hampered and the Selective Service process itself placed in jeopardy. The plain purpose of the proviso is to preclude registrants from attempting to delay their imminent induction by waiting until after they have been ordered to report for induction to present their claims for exemptions or deferments. The registrant's legitimate interests are, however, safeguarded by the clause which permits reopening of the classification after the mailing of the induction notice if the board specifically finds that there has been a change of status resulting from circumstances beyond the registrant's control.

If all registrants could wait until after they received their notice to report for induction to begin the administrative process for challenging their classification; the Selective Service System would have no way of assuring that it could meet the manpower

requirements of our armed forces for any given period. As the court noted in the *Keene* v. *United States,* 266 F. 2d 378, 384 (C.A. 10), the proviso is essential because without it "the whole machinery of the selective service process [might] conceivably be disrupted by last minute changes in status for purposes of avoidance." Or as the court in *United States* v. *Gearey,* 368 F. 2d 144, 149 (C.A. 2), observed:

> We can see no sound reason why a regulation may not require that claims for deferment should be advanced as soon as they have matured. If young men eligible for the draft are permitted endlessly to challenge their status and to claim review of adverse determinations, the effect on the Selective Service System would be chaotic for manpower quotas could rarely be met with any degree of certainty.

Since the part of Regulation 1625.2 precluding the local board from reopening or reconsidering a classification subsequent to the mailing of an induction notice is a reasonable and necessary part of the Selective Service process, it appears *a fortiori* that the courts should be precluded from examining the correctness of a registrant's classification on the basis of facts not seasonably brought to the attention of the local board. As this Court recognized only recently in *Clark* v. *Gabriel,* No. 572, this Term, decided December 16, 1968, the question whether a registrant is entitled to a particular deferment "involves a determination of fact and an exercise of judgment" which the statute has committed to the local board (slip opinion, p. 2). Indeed, the occupational and depend-

ency deferments which petitioner attempted to claim are matters which are peculiarly suited for determination by the local board. Regulation 1622.20 provides that "On the local board is placed the responsibility, under applicable rules and regulations, of deciding which men should be deferred because of their civilian activities." Similarly, the question whether a registrant's induction would work an "extreme hardship" on those who are dependent on him for support is one which clearly involves the weighing of a number of circumstances and one in which the local board's right "to request and receive information from local welfare and governmental agencies" (32 C.F.R. 1621.14) can play an important role. As Mr. Justice Harlan noted in his concurring opinion in *Oestereich* v. *Selective Service Board*, No. 46, this Term, decided December 16, 1968, "Classification is a highly individualized process in which a board must consider all pertinent information presented to it" (slip opinion p. 2). Thus, where the local board is precluded from reopening a classification because the registrant has failed to bring the relevant facts to the board's attention within the time specified by the regulations, the court should not attempt to determine for itself whether a defendant would have been granted a deferment had the local board been free to consider his claim. See *Estep* v. *United States*, 327 U.S. 114.[16]

[16] Since the board's action refusing to reopen petitioner's classification was taken pursuant to a valid regulation, there is no basis for petitioner's claim that he was thereby denied due process of law. Cf. *Evans* v. *United States*, 252 F. 2d 509, 512–513 (C.A. 9).

B. THE LOCAL BOARD DID NOT IN FACT CONTINUE TO WEIGH AND EVALUATE PETITIONER'S DRAFT STATUS DURING THE PERIOD THAT FOLLOWED THE MAILING OF THE INDUCTION NOTICE.

Petitioner argues that, despite Regulation 1625.2, the local board did in fact continue to weigh and evaluate his draft status during the period after the mailing of the induction notice (Pet. Br. 4, 26–32). He contends that the board, in permitting him, his mother, and his employer to present information to it in connection with their efforts to secure a change in his classification, and in giving "attention" and "consideration" (Pet. Br. 4, 26, 29) to the information and requests, *in effect* reopened his classification; and that, consequently, when the board refused the requests for deferment, it had the duty to notify him of the fact in the same manner as if it had initially reclassified him, thereby reviving his right of administrative appeal (Pet. Br. 26–27, 32). Cf. 32 C.F.R. 1625.11, 1625.12, and 1625.13; and see note 14, *supra*, pp. 20.

A short answer to this contention is that since the board was *prohibited* from reopening petitioner's classification after the issuance of the notice to report for induction by Regulation 1625.2 there can be no basis for a claim of prejudice. Any attempt by the board to evaluate petitioner's status would have been *ultra vires* and could not have conferred additional rights on petitioner. Cf. *Stain* v. *United States*, 235 F. 2d 339, 343 (C.A. 9).

In any event, the record contains no real support for petitioner's assertion that the board was reconsidering or reevaluating his draft status during the

period in question. The record does show that the board gave careful consideration to all the information that was submitted. But this suggests no more than that the board was scrutinizing the information—as it had the duty to do—to determine whether there was basis for a finding that there had been a change in status resulting from circumstances beyond petitioner's control. The board's letter to petitioner of April 28, 1966, stating that the information submitted by him and his mother had been "given careful consideration" (A. 85) does not imply that the board did more than to determine whether it reflected a change in circumstance over which petitioner had no control.

Neither is it relevant (see Pet. Br. 28–29) that other boards, at other times and places, may possibly have reopened registrants' classifications after issuance of an induction order under circumstances other than those permitted by Regulation 1625.2. That other boards may have ignored or overlooked the proviso of that regulation is plainly not a valid basis for challenging the action of petitioner's board in complying with the regulation's command.

II

THE LOCAL BOARD HAD NO DUTY TO SPECIFICALLY ADVISE PETITIONER THAT FAILURE TO PURSUE SEASONABLY THE ADMINISTRATIVE REMEDIES OPEN TO HIM WOULD PRECLUDE HIM FROM CHALLENGING HIS CLASSIFICATION IN ANY FUTURE TRIAL HE MIGHT UNDERGO FOR REFUSAL TO SUBMIT TO INDUCTION

1. There is no merit in petitioner's contention that it was error for the court of appeals to apply the exhaustion doctrine in his case because he was never

warned of the consequences of a failure to pursue his administrative remedies seasonably (Pet. 19–22; cf. Pet. Br. 12, 14, 24–25). The considerations governing the waiver of constitutional rights in criminal cases (see, *e.g.*, *Johnson* v. *Zerbst*, 304 U.S. 458, 464; *Carnley* v. *Cochran*, 369 U.S. 506, 512–516) are not applicable in determining whether a registrant may be required to make a timely presentation to his local board of facts that may affect his classification. A clear distinction is found in the fact that a deferment from military service is not a right of the registrant; it is a matter of legislative grace. See, *e.g.*, *Richter* v. *United States*, 181 F. 2d 591 (C.A. 9), certiorari denied, 340 U.S. 892; *Bradley* v. *United States*, 218 F. 2d 657 (C.A. 9), reversed on other grounds, 348 U.S. 967. Indeed, the occupational deferment which petitioner sought is not provided for the registrant's benefit, but rather, is provided to promote "the national interest" (32 C.F.R. 1622.20). Certainly, no right of the registrant is denied because the President in adopting the regulations has determined that it is more important to the national interest that questions of classification be finally determined prior to the time a notice of induction is mailed, than that the local board be free to consider even a legitimate claim to an occupational deferment after that date. Petitioner's reliance (Pet. 19; Pet. Br. 12) on such decisions as *Miranda* v. *Arizona*, 384 U.S. 436, is, therefore, clearly misplaced.

Every registrant is warned, by notices appearing both on his registration and classification certificates, that he is required to notify his local board in writing

of every change in address, physical condition, and occupational, marital, family, dependency, and military status, and of any other fact which might change his classification (see *United States* v. *O'Brien,* 391 U.S. 367, 374). The classification certificate also tells him—as does the related regulation, 32 C.F.R. 1625.1 (b) (Appendix, *infra,* p. 39)—that he must report each such change within ten days of its occurrence.[17] In addition, each registrant is given detailed advice concerning his right, within an indicated time limit, to request a personal appearance before the local board in regard to his classification, to appeal from the local board's decision in the matter, and, under specified conditions, to appeal further, if necessary, to the President.[18] The registrant is further advised, in boldface type, that "for information and advice" he should "go to any local board."[19] These warnings and this advice put registrants on adequate notice of the importance of the classification in the administration of the Selective Service System and of the need to

[17] SSS Form 110, revisions of May 7, 1963, January 25, 1966, and May 25, 1967.

[18] At the time petitioner was reclassified I-A this advice appeared on the postcard attached to the classification certificate by which the certificate was mailed to the registrant (SSS Form 110, revised May 7, 1963; see A. 19). The advice now appears on the reverse side of the classification certificate itself (SSS Form 110, revised May 25, 1967).

[19] When petitioner was placed in Class I-A this advice appeared on the classification certificate itself (SSS Form 110, revised May 7, 1963; *United States* v. *Miller,* 367 F. 2d 72, 75–76 (C.A. 2), certiorari denied, 386 U.S. 911). Commencing as of January 25, 1966, the instruction was printed on the postcard used to mail the certificate to the registrant (SSS Form 110, revised January 25, 1966).

observe the specified time limits in contesting or appealing a classification.

It is true that the classification certificate nowhere advises a registrant of the substance of Regulation 1625.2, under which local boards are prohibited from reopening a classification after an induction notice has been issued except on a finding of the special circumstances therein defined. It is obviously not practicable for the classification certificate (or any other document that is officially mailed to registrants) to refer to every regulation that might conceivably be important to a registrant. Due process does not demand the impossible or the impracticable. Regulation 1625.2, like every other Selective Service regulation, was of course duly published and promulgated in the Federal Register and petitioner was consequently as chargeable with knowledge of it as he was of the Selective Service Act itself. Cf. *Yakus* v. *United States,* 321 U.S. 414, 435; *Federal Crop Insurance Corp.* v. *Merrill,* 332 U.S. 380, 384–385.

2. The instant record, moreover, contains substantial evidence that petitioner was not an ignorant or unsophisticated person who lacked knowledge of the importance of prompt action to contest a classification believed to be erroneous. The incident, referred to in the Statement, involving his erroneous placement in Class I–A in 1964, before he had completed high school, indicates his awareness not only of the proper procedure to be followed to correct such a misclassification but of the importance of promptness in the matter. Within four days of the mailing of the erroneous classification notice petitioner advised his

board by letter that he was still in high school, said he could produce written proof of the fact, and requested a personal appearance before the board to discuss the matter (*supra,* p. 3). This action by petitioner stands in significant contrast to his delay, following his reclassification into Class I–A in January 1966, until after he had been ordered to report for induction before he even began to challenge the classification. Petitioner's notification to his board in July 1965 that, although he had then completed high school, he was currently taking pre-college courses, planned to attend the University in the fall, and desired an extension of his student deferment to enable him to continue his education (*supra,* p. 4) is another incident indicating that petitioner was thoroughly aware of the importance of promptness in keeping the board advised of his circumstances.

III

PETITIONER WAS PRECLUDED UNDER THE EXHAUSTION DOCTRINE FROM CONTENDING THAT THE INDICTMENT WAS SUBJECT TO DISMISSAL ON THE GROUND THAT NEGROES HAD BEEN SYSTEMATICALLY EXCLUDED FROM HIS LOCAL BOARD, BUT IN ANY EVENT THE MOTION TO DISMISS WAS PROPERLY DENIED

At Point V in his brief, petitioner asks this Court to pass on the validity of his claim that the indictment against him should have been dismissed because Negroes were allegedly excluded from membership on his draft board. The questions presented in the petition for a writ of certiorari were limited, however, to issues concerning the exhaustion of remedies doctrine;

there was no reference to the claim that Negroes had been excluded from the local board. While petitioner did mention this claim in his Reply to the Memorandum for the United States in Opposition, petitioner never sought to amend his petition to include this claim. Since the question of the alleged exclusion of Negroes from the local board was neither "set forth in the petition" nor "fairly comprised" within the stated questions, it is not properly before the Court. Rule 23(1) of the Rules of this Court. *Irvine* v. *California,* 347 U.S. 128, 129. In any event, the claim is without merit.

At a hearing on petitioner's motion, evidence was adduced that eleven persons (including the five current members) had served on the board since 1948 and government counsel advised the court that no Negro had served on the board during the preceding five years. Counsel for petitioner was granted leave to establish through affidavit, if he could, that no Negro had ever sat on the board, but no such affidavit was ever filed. The district court, stating that it would assume that no current member of the board was a Negro (A. 9), denied the motion to dismiss without opinion. On appeal, the government stipulated that no Negro had been a member of the board for five years and petitioner accepted the stipulation as the factual basis for his renewed contention that it had been error not to dismiss the indictment. The court of appeals found it unnecessary to reach the merits of the contention because it concluded that petitioner was foreclosed from making it by his failure to exhaust administrative remedies. *Supra,* pp. 9–10, 11.

We submit, *first*, that the court of appeals was right in ruling that petitioner was precluded under the exhaustion doctrine from raising the issue of alleged discrimination against Negroes in the naming of members to his local board as a defense to his criminal prosecution, and, *second*, that the argument is in any event without substance on its merits.

A. PETITIONER'S FAILURE TO EXHAUST HIS ADMINISTRATIVE REMEDIES WITH RESPECT TO THE PROPRIETY OF HIS I–A CLASSIFICATION PRECLUDED HIS CHALLENGE TO THE INDICTMENT BASED ON THE ALLEGED SYSTEMATIC EXCLUSION OF NEGROES FROM HIS LOCAL BOARD.

We have argued above that petitioner, by his failure even to begin to challenge his I-A classification until after it was too late for him to do so under Regulation 1625.2, foreclosed himself from contesting the classification at his trial. *Supra*, pp. 16–24. Similarly, by failing to exhaust his administrative remedies with respect to his classification, petitioner also precluded himself from challenging the validity of the indictment on the ground of the alleged systematic exclusion of Negroes from his local board.

The only possible relevance of the charge of systematic exclusion of Negroes from petitioner's draft board must rest on a claim that the board's act of placing and maintaining petitioner in Class I–A was tainted by improper considerations relating to race. Since the order to report for induction normally follows in due course the issuance of a I–A classification, there is no basis for distinguishing between the board's act of classifying petitioner I–A and its ordering him to report for induction. Indeed, petitioner

has at no time suggested in these proceedings that he had grounds for disobeying his induction order independent of those he had for challenging his I–A classification. Since the board was precluded under Regulation 1625.2 from considering the merits of petitioner's claim to either an occupational or hardship deferment because the facts relating to these claims were not brought to the board's attention prior to the time a notice to report for induction was mailed to petitioner, it is impossible to see how petitioner could have been prejudiced by the racial composition of the local board.

Moreover, under the principles set forth in *Falbo* v. *United States,* 320 U.S. 549,[20] petitioner's failure to exhaust his administrative remedies was properly held to preclude him from challenging the racial composition of the board. In so far as the application of the exhaustion doctrine is concerned, it can make no difference whether the reason for the challenge is that the board acted capriciously and arbitrarily in issuing the classification (the usual ground of such challenges) or that the board, for reasons of racial prejudice, declined to grant the registrant a deferment which it might otherwise have seen fit to bestow (the claimed situation here).

It is evident that if petitioner had seasonably initiated and fully exhausted his administrative remedies he might never have been faced with an induction order—since he might have procured a change of classification from his local board, the appeal board, or

[20] See our discussion in our brief on the merits in the *McKart* case, No. 403, this Term, pp. 25–30.

the President. One of the practical considerations underlying the exhaustion doctrine is that of minimizing the amount of litigation in the courts by giving administrative agencies the opportunity to correct errors through the administrative process. Thus, petitioner was properly precluded from making *any* challenge to his classification which might otherwise have been available, including the claim that it was racially motivated.

This is not to say that petitioner was required, as part of the process of exhausting his administrative remedies, to raise the issue of the alleged exclusion of Negroes from the local board before the board itself in the first instance. We suggest only that petitioner, by failing to exhaust his administrative remedies *with respect to his classification,* foreclosed himself from raising the discrimination issue in the courts—because if he had duly pursued and fully exhausted his administrative remedies respecting his classification he might in due course have secured a change of classification, have thereby obviated an induction order, and thus have rendered the discrimination issue moot. This point was recognized by Mr. Justice Harlan in his concurring opinion in *Oestereich* v. *Selective Service System,* No. 46, this Term, decided December 16, 1968, when he said (slip opinion, pp. 6–7, n. 7):

> * * * As I have discussed in the preceding text, the boards can provide no remedy for a registrant's claim that the regulations or statutes are themselves invalid. (*This is not to say that a registrant making such a claim may come into court before he has exhausted his adminis-*

trative appeals, for the System may decide in his favor on other grounds, obviating the need for further review. * * *) [Emphasis added.]

Cf. *Aircraft & Diesel Corp.* v. *Hirsch,* 331 U.S. 752, 771–773.

B. ON ITS MERITS, THE CHALLENGE TO THE BOARD'S COMPOSITION IS UNSOUND.

1. A formally sufficient answer to petitioner's claim relating to the board's allegedly racially tainted composition is that the record is bare of evidence that Negroes were systematically discriminated against in the appointment of personnel to the board. Cf. *United States* v. *Prince,* 398 F. 2d 686, 688 (C.A. 2), certiorari denied, 393 U.S. 946. The sole "factual basis" for the claim of discrimination was, and is, the fact, stipulated by the government, that no Negro had served on the board for five years. During that five-year period a total of only nine persons sat on the board, including the five incumbents (A. 5–6). These facts do not constitute even the beginning of a showing of systematic exclusion or discrimination. The total number of members was too small, and the time interval involved too brief, for the absence of Negroes to have had statistical significance. Cf. *Whitus* v. *Georgia,* 385 U.S. 545, 552. Proof that racial discrimination was practiced in the appointment of personnel to public bodies like draft boards requires more than the making of mere conclusory assertions that such discrimination occurred. Cf. *Richardson* v. *Rivers,* 335 F. 2d 996, 999 (C.A.D.C.).

2. Even if it be assumed, *arguendo,* that Negroes were discriminated against in the naming of members

to petitioner's draft board, the fact would be without legal relevance in the context of a prosecution for refusal to obey a board order. *Clay* v. *United States,* 397 F. 2d 901, 909–913 (C.A. 5), petition for certiorari pending, No. 271, this Term; *Sumrall* v. *United States,* 397 F. 2d 924, 926 (C.A. 5), certiorari denied, December 9, 1968, No. 711 Misc., this Term; *United States* v. *Prince,* 398 F. 2d 686, 688 (C.A. 2), certiorari denied, 393 U.S. 946; *Haven* v. *United States,* 403 F. 2d 384, 386–387 (C.A. 9), petition for certiorari pending, No. 1343 Misc., this Term; *Nelloms* v. *United States,* 399 F. 2d 295 (C.A. 5), certiorari denied, No 781 Misc., this Term, January 27, 1969; cf. *United States* v. *Richmond,* 274 F. Supp. 43, 60 (C.D. Cal.). The analogy which petitioner seeks to draw between juries and public administrative bodies such as draft boards is inapt. *Haven* v. *United States, supra.* The right to a trial in a criminal case by a jury chosen from a cross-section of the community is guaranteed by the Constitution. A large part of the community has the right and the duty to serve on juries so that the constitutional mandate for a jury representing a fair cross-section of the community may be satisfied. In contrast, the members of local Selective Service boards are selected by the President from persons recommended by the Governors of the States in which they serve; their only prescribed qualifications are that they be civilian citizens, residents of the counties in which they serve, and between 30 and 75 years of age (50 U.S.C. App. 460(b)(3); 32 C.F.R. 1604.52). The number who serve is, in com-

parison to the number serving on juries, very small. The limited numbers involved and the fact that Presidential discretion, rather than random methods of choice, is involved in the selection procedure renders reliance on statistics as a basis for showing racial prejudice unwarranted.

To prevail here, the petitioner would have to show that there was in fact racial discrimination in the operations of this local board. The record is completely bare of any evidence to this effect. Thus the petitioner's argument falls for a complete failure of proof.

If all of the members of a given local board meet the qualifications prescribed in the law and regulations, there is no valid legal basis for allowing judicial challenges to the board's composition solely on the ground that racial or religious considerations may have entered into the appointing authorities' decision as to who shall serve. The possible prejudices and biases of the appointing authorities are no more subject to judicial scrutiny and supervision in the enforcement of the orders of the board than would be like biases in the filling of vacancies in the Cabinet, on regulatory commissions, or on courts. As the court observed in *Haven* v. *United States, supra,* 403 F. 2d at 386–387:

> * * * We find no support in administrative law or in constitutional law for a contention that the composition of the membership of an administrative board, comprised under laws which are not themselves void for constitutional infringement, may be attacked by showing that certain groups or classes of persons, racial, religious or

otherwise, have never been privileged to serve on such a board. We see no fair analogy between the composition of a jury, required by the Sixth Amendment to be fair and impartial, where systematic and deliberate exclusion of classes of persons will destroy the constitutional qualification of the tribunal, and the composition of an administrative board in the executive department of the Government.

* * * * *

We find nothing in the requirements of the law and regulations which can be characterized as invidiously discriminatory. Accordingly, if the local board members have been appointed by the President upon the recommendation of the Governor, and each member meets the requirements of the law and regulations, no further attack upon the composition of the board may be entertained. The mental processes, prejudices and biases of the appointing authorities are not a subject of judicial scrutiny and supervision.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

WILL WILSON,
Assistant Attorney General.

JOHN S. MARTIN, JR.,
Assistant to the Solicitor General.

PHILIP R. MONAHAN,
Attorney.

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APPENDIX

Selective Service Regulations 1625.1 and 1625.2 (32 C.F.R. 1625.1 and 1625.2) provide in pertinent part:

§ 1625.1 *Classification not permanent.*

(a) No classification is permanent.

(b) Each classified registrant and each person who has filed a request for the registrant's deferment shall, within 10 days after it occurs, report to the local board in writing any fact that might result in the registrant being placed in a different classification such as, but not limited to, any change in his occupational, marital, military, or dependency status, or in his physical condition. Any other person should report to the local board in writing any such fact within 10 days after having knowledge thereof.

* * * * *

§ 1625.2 *When registrant's classification may be reopened and considered anew.*

The local board may reopen and consider anew the classification of a registrant (a) upon the written request of the registrant, the government appeal agent, any person who claims to be a dependent of the registrant, or any person who has on file a written request for the current deferment of the registrant in a case involving occupational deferment, if such request is accompanied by written information presenting facts not considered when the registrant was classified, which, if true, would justify a change in the registrant's classification; or (b) upon its own motion if such action is based upon facts not considered when the registrant was classified which, if true, would justify a change in the registrant's classification; provided, in either event, the classification of a

registrant shall not be reopened after the local board has mailed to such registrant an Order to Report for Induction (SSS Form No. 252) * * * unless the local board first specifically finds there has been a change in the registrant's status resulting from circumstances over which the registrant had no control.

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